

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL J. BOND and LISA GREEN) Case No. 07cv0744-BTM (BLM)
BOND,)
Plaintiffs,) **CASE MANAGEMENT CONFERENCE
ORDER REGULATING DISCOVERY AND
OTHER PRETRIAL PROCEEDINGS**
v.) (Fed. R. Civ. P. 16)
COUNTRY COACH, INC., HOLLAND) (Local Rule 16.1)
MOTOR HOMES, and DOES 1 through) (Fed. R. Civ. P. 26)
10, inclusive,)
Defendants.)

)

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, a telephonic Case Management Conference was held on June 28, 2007 at 1:30 p.m. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing,

IT IS HEREBY ORDERED:

1. Any motion to join other parties, to amend the pleadings, or to file additional pleadings shall be filed on or before August 31, 2007.

2. Each party shall serve on all opposing parties a list of experts, whom that party expects to call at trial, on or before September 28, 2007. Each party may supplement its designation in

1 response to the other party's designation no later than October 12,
2 2007. Expert designations shall include the name, address, and
3 telephone number of each expert and a reasonable summary of the
4 testimony the expert is expected to provide. The list shall also
5 include the normal rates the expert charges for deposition and trial
6 testimony.

7 The parties must identify any person who may be used at trial to
8 present evidence pursuant to Rules 702, 703 or 705 of the Federal Rules
9 of Evidence. This requirement is not limited to retained experts.

10 **Please be advised that failure to comply with this section or any**
11 **other discovery order of the Court may result in the sanctions provided**
12 **for in Fed. R. Civ. P. 37, including a prohibition on the introduction**
13 **of experts or other designated matters in evidence.**

14 3. All expert disclosures required by Fed. R. Civ. P. 26(a)(2)
15 shall be served on all parties on or before November 16, 2007. Any
16 contradictory or rebuttal information shall be disclosed on or before
17 November 30, 2007. In addition, Fed. R. Civ. P. 26(e)(1) imposes a duty
18 on the parties to supplement the expert disclosures made pursuant to
19 Fed. R. Civ. P. 26(a)(2)(B) by the time that pretrial disclosures are
20 due under Fed. R. Civ. P. 26(a)(3) (discussed below).

21 The parties are advised to consult with Fed. R. Civ. P. 26(a)(2)
22 regarding expert disclosures. Such disclosures shall include an expert
23 report, all supporting materials, a complete statement of all opinions
24 to be expressed and the basis and reasons therefor, the data or other
25 information considered by the expert in forming the opinions, any
26 exhibits to be used as a summary of or support for the opinions, the
27 qualifications of the witness including a list of all publications
28 authored by the witness within the preceding ten years, the compensation

1 to be paid for the study and testimony, and a list of other cases in
2 which the witness has testified as an expert at trial or by deposition
3 within the preceding four years.

4 This disclosure requirement applies to all persons retained or
5 specially employed to provide expert testimony, or whose duties as an
6 employee of the party regularly involve the giving of expert testimony.

7 **Please be advised that failure to comply with this section or any**
8 **other discovery order of the Court may result in the sanctions provided**
9 **for in Fed. R. Civ. P. 37, including a prohibition on the introduction**
10 **of experts or other designated matters in evidence.**

11 4. All discovery, other than expert discovery, shall be completed
12 by all parties on or before January 14, 2008. All expert discovery,
13 shall be completed by all parties on or before February 4, 2008.
14 "Completed" means that all discovery under Rules 30-36 of the Federal
15 Rules of Civil Procedure, and discovery subpoenas under Rule 45, must
16 be initiated a sufficient period of time in advance of the cut-off date,
17 so that it may be completed by the cut-off date, taking into account the
18 times for service, notice, and response as set forth in the Federal
19 Rules of Civil Procedure.

20 Counsel shall promptly and in good faith meet and confer with
21 regard to all discovery disputes in compliance with Civil Local Rules
22 16.5(k) and 26.1(a). All discovery motions shall be filed within thirty
23 (30) days after counsel have met and conferred and reached an impasse
24 with regard to any particular discovery issue, but in no event shall
25 discovery motions be filed more than sixty (60) days after the date upon
26 which the event giving rise to the discovery dispute occurred. For oral
27 discovery, the event giving rise to the discovery dispute is the
28 completion of the transcript of the affected portion of the deposition.

1 For written discovery, the event giving rise to the discovery dispute
2 is either the service of the response, or, if no response was served,
3 the initial date the response was due. In addition, all discovery
4 motions must be filed within thirty (30) days after the close of
5 discovery.

6 5. All other pretrial motions must be filed on or before March
7 3, 2008. Motions will not be heard or calendared unless counsel for the
8 moving party has obtained a motion hearing date from the law clerk of
9 the judge who will hear the motion. Be advised that the parties must
10 file their moving papers within three (3) days of receiving their motion
11 hearing date from the Court. Failure to timely request a motion date
12 may result in the motion not being heard. Motions will not be heard
13 unless you have obtained a date from the judge's law clerk.

14 Questions regarding this case should be directed to the judge's law
15 clerk. The Court draws the parties' attention to Local Rule 7.1(e)(4)
16 which requires that the parties allot additional time for service of
17 motion papers by mail. Papers not complying with this rule shall not
18 be accepted for filing.

19 Briefs or memoranda in support of or in opposition to any pending
20 motion shall not exceed twenty-five (25) pages in length without leave
21 of the judge who will hear the motion. No reply memorandum shall exceed
22 ten (10) pages without leave of the judge who will hear the motion.

23 6. A Mandatory Settlement Conference shall be conducted on
24 September 26, 2007 at 9:30 a.m. in the chambers of Magistrate Judge
25 Barbara L. Major located at 940 Front Street, Suite 5140, San Diego, CA
26 92101. All discussions at the Mandatory Settlement Conference will be
27 informal, off the record, privileged, and confidential. Counsel for any
28 non-English speaking party is responsible for arranging for the

1 appearance of an interpreter at the conference.

2 a. **Personal Appearance of Parties Required:** All parties,
 3 adjusters for insured defendants, and other representatives of a party
 4 having full and complete authority to enter into a binding settlement,
 5 as well as the principal attorneys responsible for the litigation, must
 6 be present in person and legally and factually prepared to discuss
 7 settlement of the case. Counsel appearing without their clients
 8 (whether or not counsel has been given settlement authority) will be
 9 cause for immediate imposition of sanctions and may also result in the
 10 immediate termination of the conference.

11 Unless there are extraordinary circumstances, persons required to
 12 attend the conference pursuant to this Order shall not be excused from
 13 personal attendance. **Requests for excuse from attendance for extraordi-**
 14 **nary circumstances shall be made in writing at least seventy-two (72)**
 15 **hours prior to the conference.** Failure to appear in person at the
 16 Mandatory Settlement Conference will be grounds for sanctions.

17 b. **Full Settlement Authority Required:** In addition to
 18 counsel who will try the case, a party or party representative with full
 19 settlement authority¹ must be present for the conference. In the case
 20 of a corporate entity, an authorized representative of the corporation

22 ¹ "Full settlement authority" means that the individuals at the settlement
 23 conference must be authorized to explore settlement options fully and to agree at that
 24 time to any settlement terms acceptable to the parties. Heileman Brewing Co. v. Joseph
Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have "unfettered
 25 discretion and authority" to change the settlement position of a party. Pitman v.
Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring
 26 a person with unlimited settlement authority to attend the conference contemplates that
 27 the person's view of the case may be altered during the face to face conference. Id.
 28 at 486. A limited or a sum certain of authority is not adequate. See Nick v. Morgan's
Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

1 who is not retained outside counsel must be present and must have
2 discretionary authority to commit the company to pay an amount up to the
3 amount of the Plaintiff's prayer (excluding punitive damages prayers).
4 The purpose of this requirement is to have representatives present who
5 can settle the case during the course of the conference without
6 consulting a superior. Counsel for a government entity may be excused
7 from this requirement so long as the government attorney who attends the
8 Mandatory Settlement Conference (1) has primary responsibility for
9 handling the case, and (2) may negotiate settlement offers which the
10 attorney is willing to recommend to the government official having
11 ultimate settlement authority.

12 c. Confidential Settlement Statements Required: No later
13 than September 19, 2007, the parties shall submit directly to Magistrate
14 Judge Major's chambers confidential settlement statements no more than
15 five (5) pages in length. These confidential statements shall not be
16 filed or served on opposing counsel. Each party's confidential
17 statement must include the following:

18 (i) A brief description of the case, the claims and/or
19 counterclaims asserted, and the applicable defenses or position
20 regarding the asserted claims;

21 (ii) A specific and current demand or offer for
22 settlement addressing all relief or remedies sought. If a specific
23 demand or offer for settlement cannot be made at the time the brief is
24 submitted, then the reasons therefore must be stated along with a
25 statement as to when the party will be in a position to state a demand
26 or make an offer; and

27 (iii) A brief description of any previous settlement
28 negotiations, mediation sessions, or mediation efforts.

1 General statements that a party will "negotiate in good faith" is
2 not a specific demand or offer contemplated by this Order. It is
3 assumed that all parties will negotiate in good faith.

4 d. **Requests to Continue a Mandatory Settlement Conference:**

5 Any request to continue the Mandatory Settlement Conference or request
6 for relief from any of the provisions or requirements of this Order must
7 be sought by a **written ex parte application**. The application must (1)
8 be supported by a declaration of counsel setting forth the reasons and
9 justifications for the relief requested, (2) confirm compliance with
10 Civil Local Rule 26.1, and (3) report the position of opposing counsel
11 or any unrepresented parties subject to the Order. **Absent extraordinary**
12 **circumstances, requests for continuances will not be considered unless**
13 **submitted in writing no less than seven (7) days prior to the scheduled**
14 **conference.**

15 **If the case is settled in its entirety before the scheduled date**
16 **of the conference, counsel and any unrepresented parties must still**
17 **appear in person, unless a written joint motion confirming the complete**
18 **settlement of the case is submitted no less than twenty-four (24) hours**
19 **before the scheduled conference.**

20 7. The parties must comply with the pretrial disclosure
21 requirements of Fed. R. Civ. P. 26(a)(3) no later than **June 11, 2008**.
22 The parties should consult Fed. R. Civ. P. 26(a)(3) for the substance
23 of the required disclosures.

24 **Please be advised that failure to comply with this section or any**
25 **other discovery order of the Court may result in the sanctions provided**
26 **for in Fed. R. Civ. P. 37, including a prohibition on the introduction**
27 **of designated matters in evidence.**

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1 8. No Memoranda of Contentions of Fact and Law are to be filed
2 except in a bench trial. In that case, counsel shall serve on each
3 other and file with the Clerk of the Court their Memoranda of Conten-
4 tions of Fact and Law in compliance with Local Rule 16.1(f)(2) on or
5 before June 11, 2008.

6 9. Counsel shall meet and confer regarding the contents of the
7 pretrial order on or before June 18, 2008.

8 10. Counsel shall comply with the attached Order Setting Form of
9 Pretrial Order in preparing the pretrial order.

10 11. The proposed final pretrial conference order, including
11 written objections, if any, to any party's Fed. R. Civ. P. 26(a)(3)
12 pretrial disclosures, shall be prepared, served, and submitted to the
13 Clerk's Office on or before June 25, 2008. Such objections shall comply
14 with the requirements of Fed. R. Civ. P. 26(a)(3). **Please be advised**
15 **that the failure to file written objections to a party's pretrial**
16 **disclosures may result in the waiver of such objections, with the**
17 **exception of those made pursuant to Rules 402 (relevance) and 403**
18 **(prejudice, confusion or waste of time) of the Federal Rules of**
19 **Evidence.**

20 12. The final pretrial conference is scheduled on the calendar of
21 the Honorable Barry Ted Moskowitz on July 2, 2008 at 4:00 p.m. The
22 trial date will be assigned by Judge Moskowitz at the pretrial

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1 conference.

2 13. The dates and times set forth herein will not be modified
3 except for good cause shown.

4 14. Plaintiff's(s') counsel shall serve a copy of this order on
5 all parties that enter this case hereafter.

6 DATED: June 29, 2007

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8 BARBARA L. MAJOR
9 United States Magistrate Judge

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11 COPY TO:

12 HONORABLE BARRY TED MOSKOWITZ
13 UNITED STATES DISTRICT JUDGE

14 ALL COUNSEL

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL J. BOND and LISA GREEN) Civil No. 07cv0744-BTM (BLM)
BOND,)
Plaintiffs,) **ORDER SETTING FORM**
) **OF PRETRIAL ORDER**
v.)
)
COUNTRY COACH, INC., HOLLAND)
MOTOR HOMES, and DOES 1 through)
10, inclusive,)
Defendants.)
)

In order to identify the claims to be tried and eliminate delay and surprise at trial, the Court enters the following pretrial order pursuant to Fed. R. Civ. P. 16. This order replaces the requirements under Local Rule 16.1(f)(2). No Memoranda of Contentions of Fact and Law are to be filed except in a bench trial.

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1 The parties shall meet and confer and prepare a proposed pretrial
2 order containing the following:

3 1. A statement to be read to the jury, not in excess of one page,
4 of the nature of the case and the claims and defenses.

5 2. A list of the causes of action to be tried, referenced to the
6 Complaint and Counterclaim. For each cause of action, the order shall
7 succinctly list the elements of the claim, damages and any defenses.
8 A cause of action in the Complaint or Counterclaim which is not listed
9 shall be dismissed with prejudice.

10 3(a). A list of each witness that counsel actually expects to
11 call at trial with a brief statement, not exceeding four sentences, of
12 the substance of the witnesses' testimony.

13 3(b). A list of expert witness(es) that counsel actually
14 expects to call at trial with a brief statement, not exceeding four
15 sentences, of the substance of the expert witnesses' testimony.

16 3(c). A list of additional witnesses including experts that
17 counsel do not expect to call at this time but reserve the right to call
18 at trial along with a brief statement, not exceeding four sentences, of
19 the substance of the witnesses' testimony.

20 4(a). A list of all exhibits that counsel actually expect to
21 offer at trial with a one-sentence description of the exhibit.

22 4(b). A list of all other exhibits that counsel do not expect
23 to offer at this time but reserve the right to offer if necessary at
24 trial with a one-sentence description of the exhibit.

25 5. A statement of all facts to which the parties stipulate. This
26 statement shall be on a separate page and will be read to and provided
27 to the jury. The parties are directed to meet with the assigned
28 magistrate judge to work out as many stipulations of fact as possible.

1 6. A list of all deposition transcripts by page and line, or
2 video tape depositions by section, that will be offered at trial. The
3 proponent of the deposition shall prepare a copy of all portions to be
4 read or played to the jury.

5 7. The parties shall prepare proposed jury instructions (if trial
6 by jury) on the substantive claims, damages and defenses. One set of
7 proposed instructions shall be given to the court. If the parties
8 disagree on an instruction, the alternative instructions shall be
9 submitted.

10 8. The parties shall prepare a proposed jury verdict form.

11 The Court encourages the parties to consult with the assigned
12 magistrate judge to work out any problems in preparation of the proposed
13 pretrial order. The Court will entertain any questions concerning the
14 conduct of the trial at the pretrial conference.

15 **IT IS SO ORDERED.**

16 DATED: June 29, 2007

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18 BARBARA L. MAJOR
19 United States Magistrate Judge

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21 COPY TO:

22 HONORABLE BARRY TED MOSKOWITZ
23 UNITED STATES DISTRICT JUDGE

24 ALL COUNSEL

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